

ASSEMBLY BILL

No. 2732

**Introduced by Assembly Member Eng
(Coauthor: Assembly Member Lieu)**

February 19, 2010

An act to amend Section 10700 of, and to add Sections 10708, 10709, 10710, 10711, and 10712 to, the Elections Code, and to amend Section 1773 of the Government Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 2732, as introduced, Eng. Special legislative or congressional election: instant runoff voting.

Existing law requires the Governor to call a special election to fill a vacancy in a congressional or legislative office within 14 calendar days of the occurrence of the vacancy and provides that all candidates be listed on the ballot and, if any candidate receives a majority of all votes cast, he or she shall be declared elected. If a candidate does not receive a majority of all votes cast, the names of the candidates receiving the most votes representing a qualified political party are placed on the special general election ballot as that party's candidate. Under existing law, the special primary and the special general elections are required to be conducted within specified time periods.

This bill would instead authorize the board of supervisors of a county affected by the special election to make a determination within 30 days of a vacancy on whether to fill a vacancy in the office of United States Representative in Congress, State Senator, or Member of the Assembly by using a prescribed instant runoff voting method, except that if 2 or more counties are affected, all affected counties would have to agree to use the instant runoff voting method. The bill also would require the

Governor to call the special election within 5 calendar days after the determination of the affected county or counties on whether it will use the instant runoff procedures or within 35 days of the vacancy if no determination is made.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10700 of the Elections Code is amended
2 to read:
3 10700. (a) The Governor shall call all statewide special
4 elections by issuing a proclamation pursuant to Section 12000.
5 ~~Except~~
6 (b) *Within 30 calendar days of the occurrence of a vacancy in*
7 *the office of United States Representative in Congress, State*
8 *Senator, or Member of the Assembly, the board of supervisors of*
9 *each affected county may determine during a public hearing*
10 *whether to fill the vacancy pursuant to either of the following*
11 *methods:*
12 (1) *Pursuant to Sections 10701, 10702, 10703, 10704, 10705,*
13 *10706, and 10707.*
14 (2) *Pursuant to Sections 10701 and 10702, subdivision (b) of*
15 *Section 10703, and Sections 10707, 10708, 10709, 10710, 10711,*
16 *and 10712.*
17 (c) *If neither option in subdivision (b) is approved by a majority*
18 *of an affected county's board of supervisors within 30 calendar*
19 *days of the occurrence of the vacancy, a quorum being present,*
20 *then the vacancy shall be filled pursuant to paragraph (1) of*
21 *subdivision (b). If two or more counties are affected by the vacancy,*
22 *the vacancy shall be filled pursuant to paragraph (1) of subdivision*
23 *(b), unless all affected counties determine through their respective*
24 *boards of supervisors, in accordance with the procedure set forth*
25 *above, to fill the vacancy pursuant to paragraph (2) of subdivision*
26 *(b).*
27 (d) *Except as provided by Chapter 3 (commencing with Section*
28 *10730), in the case of a vacancy in a congressional or legislative*
29 *office the Governor shall issue a proclamation, within*
30 *calendar days of the occurrence of the vacancy determination made*
31 *pursuant to subdivision (b), or within 35 calendar days after the*

1 *occurrence of the vacancy if no such determination has been made,*
2 *calling a special election in accordance with ~~Section 10703~~ that*
3 *subdivision.* A copy of the proclamation shall be sent to the board
4 of supervisors of each affected county.

5 SEC. 2. Section 10708 is added to the Elections Code, to read:

6 10708. If authorized pursuant to paragraph (2) of subdivision
7 (b) of Section 10700, special elections to fill a vacancy in the
8 offices of United States Representative in Congress, State Senator,
9 and Member of the Assembly shall be conducted using “instant
10 runoff voting,” also known as “ranked choice voting.”

11 (b) As used in this chapter, the following definitions apply:

12 (1) “Instant runoff voting” means an election method in which
13 voters rank the candidates for office in order of preference, and
14 the ballots are counted in rounds that, in the case of a single-winner
15 election, simulate a series of runoffs until one candidate receives
16 a majority of votes.

17 (2) In each round of counting the following definitions apply:

18 (A) “Continuing ballot” means a ballot that counts toward some
19 candidate.

20 (B) “Continuing candidate” means a candidate that has not been
21 eliminated.

22 (C) “Majority of votes” means more than 50 percent of the votes
23 coming from continuing ballots.

24 (c) Instant runoff voting for special elections to fill a vacancy
25 in the offices of United States Representative in Congress, State
26 Senator, and Member of the Assembly shall be conducted
27 according to the procedures set forth in this section. Every affected
28 county shall conduct a voter education campaign to familiarize
29 voters with instant runoff voting.

30 (d) The instant runoff voting ballot shall allow voters to rank
31 as many choices as there are candidates. The ballot shall not
32 interfere with a voter’s ability to rank a write-in candidate. For the
33 purposes of this section, a mark for an unqualified write-in
34 candidate shall not be considered a mark for a candidate.

35 (e) The method of voting and counting ballots shall be conducted
36 by using rounds in the following manner:

37 (1) In the first round, every ballot shall count as a vote toward
38 the first-choice candidate on that ballot.

1 (2) After every round, if any candidate receives a majority of
2 votes from the continuing ballots, that candidate shall be declared
3 the winner.

4 (3) If no candidate receives a majority, the candidate receiving
5 the smallest number of votes shall be eliminated, and every ballot
6 counting toward that candidate shall be advanced to the next-ranked
7 continuing candidate on the ballot. If there is a tie between two or
8 more candidates for the smallest number of votes, the tie shall be
9 resolved by lot. All the ballots shall be counted again in a new
10 round.

11 (f) During the elimination stage of any round, in the event that
12 any candidate has more votes than the combined vote total of all
13 candidates with fewer votes, all the candidates with fewer votes
14 shall be eliminated simultaneously, and those ballots advanced to
15 the next-ranked continuing candidate.

16 (g) Skipped rankings. In the first or any round, in the event that
17 any ballot reaches a ranking with no candidate indicated, that ballot
18 shall immediately be advanced to the next ranking.

19 (h) After each round, any ballot that is not continuing is either
20 an undervote, overvote, or exhausted ballot, as follows:

21 (1) Any ballot that has no candidates indicated at any ranking
22 shall be declared an “undervote.”

23 (2) In the event that any ballot reaches a ranking with more than
24 one candidate indicated, that ballot shall immediately be declared
25 an “overvote.”

26 (3) In the event that any ballot cannot be advanced because no
27 further candidates are ranked on that ballot, that ballot shall
28 immediately be declared “exhausted.”

29 (4) Any ballot that has been declared an undervote, overvote,
30 or exhausted shall remain so and shall not count toward any
31 candidate in that round or in subsequent rounds.

32 (i) Summary, ballot image, and comprehensive reports shall be
33 made available after each instant runoff voting election, as follows:

34 (1) The “summary report” for an election means a report that
35 lists the candidate vote totals in each round, along with the
36 cumulative numbers of undervotes, overvotes, and exhausted
37 ballots in each round.

38 (2) The “ballot image report” for an election means a report that
39 lists, for each ballot, the candidate or candidates indicated at each
40 ranking, the precinct of the ballot, and whether the ballot was cast

absentee. In the report, the ballots shall be listed in an order that does not permit the order in which they were cast in each precinct to be reconstructed.

(3) The “comprehensive report” for an election means a report that breaks the numbers in the summary report down by precinct. The report shall list, for each round, the number of ballots cast in each precinct as follows:

(A) Ballots that count as votes for each candidate in that round.

(B) Ballots that have been declared undervotes.

(C) Ballots that have been declared overvotes up to that point.

(D) Ballots that have been declared exhausted up to that point.

(4) Preliminary versions of the summary report and ballot image report shall be made available as soon as possible after the ballots have begun to be processed and counted. The summary report, ballot image report, comprehensive report, and preliminary versions of the summary report and ballot image report shall be made available to the public during the canvass via the Internet and by other means. The ballot image report and preliminary versions of the ballot image report shall be made available in a plain text electronic format.

(j) Prior to the selection of precincts for the public postelection manual tally, as provided by state law, a report shall be made available to the public that lists, for the ballots subject to the manual tally, the number of those ballots in each precinct that counted in each round as undervotes, overvotes, exhausted ballots, and as votes for each candidate. The public manual tally shall check those vote totals in each of the randomly selected precincts.

(k) (1) For the purposes of this subdivision, “voting equipment” means all ballots or voting devices, vote tabulating systems, or similar or related systems to be used in the conduct of the instant runoff voting election, including, but not limited to, paper ballot systems, optical scan systems, and touch-screen systems.

(2) In the event that the voting equipment cannot feasibly accommodate a number of rankings on the ballot equal to the number of candidates, the Secretary of State may limit the number of choices a voter may rank to the maximum number allowed by the equipment. This limit shall never be less than three.

(3) If the voting equipment cannot feasibly accommodate all of the procedures in subdivisions (e) to (i), inclusive, the Secretary of State may make changes to those procedures provided that

1 instant runoff voting shall still be used and the fewest feasible
2 number of changes made until such time as the voting equipment
3 can accommodate those procedures in their entirety.

4 (4) If the state adopts guidelines for the conduct of instant runoff
5 voting elections and the voting equipment used to conduct the
6 instant runoff voting election can accommodate the state's
7 guidelines, the Secretary of State shall have the option of adopting
8 those guidelines, in whole or in part, in lieu of the instant runoff
9 voting procedures in this section.

10 (5) In the event that the voting equipment cannot store ballot
11 rankings, the Secretary of State may authorize the following
12 change: Before counting the ballots in rounds, the first ranking on
13 every ballot shall be tallied. The subdivision on skipped rankings
14 shall not be construed to apply to this initial tally. If some candidate
15 receives a majority of first rankings from all ballots cast, including
16 ballots with no candidate marked at the first ranking and excluding
17 ballots with more than one candidate marked at the first ranking,
18 that candidate shall be declared the winner; and the ballots shall
19 not be counted in rounds. Otherwise, the ballots shall be counted
20 in rounds in accordance with this section.

21 (6) The Secretary of State shall have the further authority to
22 make any necessary changes to the procedures set forth in this
23 subdivision, including modifying the reporting requirements, to
24 preserve the secrecy of the ballot and ensure the integrity and
25 smooth functioning of the election, provided that instant runoff
26 voting shall still be used and the fewest number of changes made
27 to achieve such purposes. If a majority of all affected counties
28 decide to adopt any such changes, then those changes shall apply
29 uniformly to all affected counties for that instant runoff voting
30 election.

31 SEC. 3. Section 10709 is added to the Elections Code, to read:

32 10709. An instant runoff voting special election shall be held
33 on a Tuesday at least 72 days, but not more than 86 days, following
34 the issuance of an election proclamation by the Governor pursuant
35 to Section 10700, except that any special election may be
36 conducted within 120 days following the proclamation in order
37 that the election or the primary election may be consolidated with
38 the next regularly scheduled statewide election or local election
39 occurring wholly or partially within the same territory in which
40 the vacancy exists, provided that the voters eligible to vote in the

1 local election comprise at least 50 percent of all the voters eligible
2 to vote on the vacancy.

3 SEC. 4. Section 10710 is added to the Elections Code, to read:

4 10710. Candidates at the instant runoff voting special election
5 shall be nominated in the manner set forth in Chapter 1
6 (commencing with Section 8000) of Part 1 of Division 8, except
7 that nomination papers shall not be circulated more than 63 days
8 before the instant runoff voting special election, shall be left with
9 the county elections official for examination not less than 43 days
10 before the instant runoff voting special election, and shall be filed
11 with the Secretary of State not less than 39 days before the instant
12 runoff voting special election.

13 SEC. 5. Section 10711 is added to the Elections Code, to read:

14 10711. Notwithstanding Section 3001, applications for vote
15 by mail ballots may be submitted not more than 25 days before
16 the instant runoff voting special election, except that Section 3001
17 shall apply if the instant runoff voting special election is
18 consolidated with a statewide election. Applications received by
19 the elections official prior to the 25th day shall not be returned to
20 the sender, but shall be held by the elections official and processed
21 by him or her following the 25th day prior to the election in the
22 same manner as if received at that time.

23 SEC. 6. Section 10712 is added to the Elections Code, to read:

24 10712. (a) All candidates shall be listed on one ballot.

25 (b) If only one candidate qualifies to have his or her name
26 printed on the instant runoff voting ballot, that candidate shall be
27 declared elected, and no instant runoff voting election shall be
28 held.

29 SEC. 7. Section 1773 of the Government Code is amended to
30 read:

31 1773. When a vacancy occurs in the office of Representative
32 to Congress, or in either house of the Legislature, the Governor
33 shall within ~~14~~ *five calendar days of the determination made*
34 *pursuant to subdivision (b) of Section 10700 of the Elections Code,*
35 *or within 35 calendar days* after the occurrence of the vacancy *if*
36 *no such determination has been made*, issue a writ of election to
37 fill the vacancy; provided, that when such vacancy occurs in a
38 congressional office after the close of the nomination period in the
39 final year of the term of office, a special election may be held, at
40 the Governor's discretion; and provided, further, that when a

1 vacancy occurs in a legislative office after the close of the
2 nomination period in the final year of the term of office, no special
3 election shall be held.

4 The Governor shall issue the election proclamation under his
5 hand and the Great Seal of the state, and transmit copies to the
6 board of supervisors of the counties in which the election is to be
7 held.

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